| Police Scotland logo | Freedom of Information Response Our reference: FOI 23-1968  Responded to: 29th September 2023 |
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Your recent request for information is replicated below, together with our response.

**Can you release the Lord Advocate's guidance on the use of Record Police Warnings?**

Please be advised that part of the requested information is publicly available.

As such, in terms of Section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the information sought. Section 16 requires Police Scotland when refusing to provide such information because it is exempt, to provide you with a notice which:

(a) states that it holds the information,

(b) states that it is claiming an exemption,

(c) specifies the exemption in question and

(d) states, if that would not be otherwise apparent, why the exemption applies.

I can confirm that Police Scotland holds the information that you have requested and the exemption that I consider to be applicable is set out at Section 25(1) of the Act - information otherwise accessible:

“Information which the applicant can reasonably obtain other than by requesting it under Section 1(1) is exempt information”

I can confirm that the information requested is available through our website. I have attached a direct link to the relevant document below and would direct you to section 3:

[Direct Measures - Standard Operating Procedure (SOP) (scotland.police.uk)](https://www.scotland.police.uk/spa-media/1yyffcgw/direct-measures-sop.pdf)

Please note that some of the information within the published document has been withheld. In relation to this withheld information please see the exemption below.

In terms of section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the information requested.

Section 16 requires Police Scotland when refusing to provide such information because it is exempt, to provide you with a notice which:

(a) states that it holds the information,

(b) states that it is claiming an exemption,

(c) specifies the exemption in question and

(d) states, if that would not be otherwise apparent, why the exemption applies.

I can confirm that Police Scotland holds the information that you have requested.

The exemptions that I consider to be applicable to the information requested by you are:

Section 35(1)(a)&(b) – Law Enforcement

Section 39(1) – Health, safety and the environment

**Section 35(1)(a)&(b) – Law Enforcement**

Information is exempt information if its disclosure under this Act would, or would be likely to prejudice substantially the prevention or detection of crime and the apprehension or prosecution of offenders.

Disclosure of the requested information would impact on the ability of the Police Service to prevent and detect crime and to release this information would be contrary to that purpose.

This is a non-absolute exemption and requires the application of the public interest test.

**39(1) – Health, safety and the environment**

The disclosure of the information requested may have the potential to increase the risk to the personal safety of individuals and also the safety of the police officers responding to incidents.

This is a non-absolute exemption and requires the application of the public interest test.

**Public Interest Test**

I would suggest that public accountability may favour disclosure, given that the information concerns guidance that Police Scotland follows in relation to direct measures. Likewise, disclosure of the information would also inform the public debate on the issue of policing and contribute to the accuracy of that debate.

However, any disclosure under FOI legislation is a disclosure to the world at large and any information identifying the focus of policing activity or tactics used could be used to the advantage of criminals.

Consequently, in terms of the applicability of the exemptions listed above, the need to ensure the effective conduct of the service in relation to prevention and detection of crime and the public safety considerations involved in the delivery of operational policing clearly favour non-disclosure of the information requested.

Accordingly, I would argue that the need to ensure the efficient and effective conduct of the service favours non-disclosure of the information requested and on balance is significantly in the public interest. I cannot identify any corresponding viewpoint in disclosing the requested information and therefore the exemptions are upheld.

I must advise you that it is doubtful it could ever be in the public interest to disclose information which would jeopardise the delivery of policing and the safety of individuals and prejudice the prevention or detection of crime.

If you require any further assistance please contact us quoting the reference above.

You can request a review of this response within the next 40 working days by [email](mailto:foi@scotland.police.uk) or by letter (Information Management - FOI, Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH). Requests must include the reason for your dissatisfaction.

If you remain dissatisfied following our review response, you can appeal to the Office of the Scottish Information Commissioner (OSIC) within 6 months - [online](http://www.itspublicknowledge.info/Appeal), by [email](mailto:enquiries@itspublicknowledge.info) or by letter (OSIC, Kinburn Castle, Doubledykes Road, St Andrews, KY16 9DS).

Following an OSIC appeal, you can appeal to the Court of Session on a point of law only.

This response will be added to our [Disclosure Log](http://www.scotland.police.uk/access-to-information/freedom-of-information/disclosure-log) in seven days' time.

Every effort has been taken to ensure our response is as accessible as possible. If you require this response to be provided in an alternative format, please let us know.